

In The United States  
Circuit Court of Appeals  
For the Ninth Circuit

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ANTHONY SCRIVANICH,

*Appellant,*

vs.

UNITED STATES IMMIGRATION AND  
NATURALIZATION SERVICE and JOHN  
P. BOYD, District Director,

*Appellee*

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Brief of Appellant

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION

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HONORABLE WILLIAM J. LINDBERG, *Judge*

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**STATEMENT CONCERNING JURISDICTION**

Petitioner, an alien, was ordered deported from the United States. He petitioned the District Court for a Writ of Habeas Corpus (Tr. 3). The petition was denied (Tr. 19). The jurisdiction of the United States District Court is sustained by provisions of Title 28, Section 41, of the United States Code Annotated, and the jurisdiction of this Court by the provisions of Title 28, Section 1291, United States Code Annotated, and the rules promulgated by the Supreme Court of the United States pursuant thereto.

## STATEMENT OF THE CASE

Petitioner Anthony Scrivanich was born in Sansego, now Yugoslavia, on August 3, 1929, and is of Slavic origin. Sansego was under Italian domination at this time, but after World War II became Yugoslavian territory. Petitioner fearing persecution and being opposed to the Communistic form of government fled his home. Subsequently, as a seaman he entered the United States on a number of occasions. His last entry was on October 23, 1951, as a seaman. Being unable to return to his native land because of his fear of persecution he remained in the United States seeking asylum.

Petitioner is now a resident of Seattle, King County, Washington, and has resided in Seattle for nearly five years. His last entry into the United States was on October 23, 1951, as a seaman when he was admitted under Section 3 (5) of the Act of May, 1924. (8 U. S. C. A. 203 (5)).

A warrant of arrest was served on petitioner on November 21, 1952, and after a hearing, an order of deportation was issued on December 16, 1952, under Sections 13 and 14 of the Act of May, 1924 (8 U. S. C. A. 213, 214), on the ground that at the time of entry he was an immigrant not in possession of a valid immigration visa as required by the Act of May 26, 1924, and was therefore subject to deportation. Petitioner appealed the decision of the hearing officer to the Board of Immigration Appeals and on May 4, 1953, the appeal was dismissed. On May 26, 1953, the District Director issued a warrant for deportation of the petitioner.



On January 4, 1955, petitioner filed an application for relief from deportation under Section 6 of the Refugee Relief Act of 1953. On January 5, 1955, the special inquiry officer recommended that the application be denied for the reason that the last entry into the United States was unlawful. The recommendation was approved by the acting regional commissioner of the Immigration and Naturalization Service on February 17, 1955.

## QUESTIONS INVOLVED

### I.

Can an alien be deported to a country other than from whence he came?

The Trial Court answered "yes."

### II.

When an alien seaman is admitted to the United States under the terms of Section 3 (5) of the Act of May, 1924, (8 U. S. C. A. 203 (5)), does such entry become illegal by reason of the fact that the alien overstays his leave?

The Trial Court answered "yes."

## ASSIGNMENTS OF ERROR

### I.

The court erred in sustaining the order directing petitioner to be deported to a country other than from whence he came.

## II.

The court erred in sustaining the finding of the special inquiry officer that petitioner entered the United States illegally.

## ARGUMENT

## ASSIGNMENT OF ERROR NO. 1

*The court erred in sustaining the Department's ruling to the effect that the petitioner could be deported to Italy.*

The order of deportation to Italy is illegal. Section 20 (8 U. S. C. A. 156) provided that deportation should be to the country from whence the alien came or to the foreign port from which he embarked for the United States. The term "country" means the state which at the time of deportation includes the place from whence the alien came. *Mensevich v. Todd*, 264 U.S. 134.

Under this section of the code the petitioner could not be deported to Italy because Italy is not the state which includes the place from whence the petitioner came. The petitioner came from Sansego, which is Yugoslavian territory, although at the time of petitioner's birth it was under Italian domination. Deportation to Italy pursuant to a hearing and deportation order under the Act of 1924 is therefore illegal.

## ASSIGNMENT OF ERROR NO. 2

*The court erred in sustaining the Department's position that the petitioner's entry into the United States was illegal.*

Petitioner was unlawfully deprived of his right to qualify as a refugee under the Refugee Relief Act of 1953.

The respondents return to the Petition for Writ of Habeas Corpus admits that petitioner was admitted under Section 3 (5) of the Act of May, 1924, (8 U. S. C. A. 203 (5)), and that this was his last entry into the United States. Such entry is a legal entry although the alien is subject to deportation if he remains longer than permitted by the terms of his admission or fails to maintain the status under which he was admitted. *United States ex rel. Cateches v. Day*, 45 F. (2) 142. The determination by the acting regional commissioner of the Immigration and Naturalization Service on February 17, 1955, to deny petitioner's application for relief under Section 6 of the Refugee Relief Act of 1953 on the ground of illegal entry was therefore erroneous and unlawfully deprived the petitioner of his right to qualify as a refugee from communist Yugoslavia.

### CONCLUSION

We respectfully submit to this Honorable Court that in the light of the foregoing cases and code sections, the deportation proceedings and administrative proceedings upon the application for relief under the Refugee Relief Act of 1953 were unlawful.

Respectfully submitted,

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